IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 9802 of 2006(P)

PETITIONER:

J.VASANTHA KUMAR, ASSISTANT GRADE II,
KERALA STATE BEVERAGES CORPORATION LIMITED,
FL 1/42, PUNALUR, KOLLAM, RESIDING AT SREEPATHAM,
VETTITHITTA P.O., PUNALUR, KOLLAM DISTRICT.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.K.VINODKUMAR
SRI.P.K.MANOJKUMAR

RESPONDENTS:
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1. THE KERALA STATE BEVERAGES
(MANUFACTURING AND MARKETING) CORPORATION LTD.,
SASTHAMANGALAM, THIRUVANANTHAPURAM-10, REP. BY
ITS MANAGING DIRECTOR.

2. THE TRAVANCORE PLYWOOD INDUSTRIES LTD.,
P.B.NO.3, PUNALUR-691 305, KOLLAM DISTRICT,
REP. BY ITS MANAGING DIRECTOR.

BY ADV. SRI.K.P.DANDAPANI (SR.) - R1
SRI.A.M.SHAFFIQUE - R2
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.9802/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE NO.711/01-02 DT.8.10.01 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P2:- COPY OF THE ORDER NO.796/01-02 DT. 15.1-.01 ISSUED BY THE MANAGING DIRECTOR, 2ND RESPONDENT TO THE PETITIONER.

EXT.P3:- COPY OF THE OFFICE ORDER NO.A1.01/01/KSBC DT. 16.10.01 ISSUED BY THE ADMINISTRATIVE OFFICER, K.S.B.C.

EXT.P4:- COPY OF THE JOINING REPORT DT. 18.10.01 SUBMITTED BY THE PETITIONER TO THE SHOP IN CHARGE, THADIYANBADU.

EXT.P5:- COPY OF THE ORDER NO.ADMN/AS4/TPOL-REV/04-05 DT. 22.11.04 ISSUED BY THE MANAGING DIRECTOR, K.S.B.C.TVM.

EXT.P6:- COPY OF THE ORDER NO.ESTT/PLR/04/DT. 25.11.04. ISSUED BY THE SHOP ASSISTANT, SHOP NO.42, PUNALUR, TO THE PETITIONER.

EXT.P7:- COPY OF THE ORDER NO.KSBC/KLM/AO/03/04-05 DT. 28.1.05 ISSUED BY THE KSB (M&M) CORPORATION LIMITED KOLLAM TO THE PETITIONER.

EXT.P8:- COPY OF THE REPLY SUBMITTED BY THE PETITIONER DT. NIL BEFORE THE MANAGER, WAREHOUSE, KOLLAM.

EXT.P9:- COPY OF THE EXTRACT OF THE MINUTES OF THE CABINET SUB COMMITTEE MEETING ON PUBLIC SECTOR UNDER TAKINGS HELD ON 9.8.05.

EXT.P10:- COPY OF THE REPRESENTATION DT. 11.3.05 SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER, EXCISE DEPARTMENT , TVM.

EXT.P11:- COPY OF THE REPRESENTATION DT. 7.12.05 SUBMITTED BY THE PETITIONER TO THE MANAGING DIRECTOR, 2ND RESPONDENT.

EXT.P12:- COPY OF THE REPRESENTATION DT. 24.2.06 SUBMITTED BY THE PETITIONER TO THE SECRETARY TO GOVERNMENT INDUSTRIES DEPARTMENT.

W.P.(C) NO.9802/2006

EXT.P13:- COPY OF THE REPRESENTATION DT. 6.3.06 SUBMITTED BY THE PETITIONER TO THE MANAGING DIRECTOR, IST RESPONDENT CORPORATION.

EXT.P14:- COPY OF THE MEMO NO.AE1/01/05/KSBC DT. 30.5.06 ISSUED BY THE MANAGING DIRECTOR, KERALA STATE BEVERAGES (MANUFACTURING AND MARKETING) CORPORATION LIMITED, TRIVANDRUM 10 TO THE ALL REGIONAL MANAGERS, ALL WAREHOUSE MANAGERS.

EXT.P15:- COPY OF THE ORDER NO.AE1/1558/07 DT. 13.4.07 ISSUED BY THE GENERAL MANAGER (ADMN) FOR MANAGING DIRECTOR, KERALA STATE BEVERAGES CORPORATION LIMITED

/TRUE COPY/

P.A. TO JUDGE

V.GIRI, J.

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W.P.(C)No.9802 of 2006

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Dated this the 14th day of December 2007

JUDGMENT

Petitioner, while working under the second respondent as a worker, was deputed to the first respondent Beverages Corporation as an Assistant grade I as per Ext.P2 order. While continuing on deputation, petitioner was posted in different shops of the first respondent Corporation. But by Ext.P5 order dtd.22.11.2004, the first respondent cancelled the deputation. It was inter alia found herein that his performance was reported to be not satisfactory. These were followed by Exts.P6 and P7 relieving orders. According to the petitioner, when he went back to the parent Company, the second respondent was found closed and therefore he was not in a position to be employ therein. He therefore challenges Exts.P5, P6 and P7 and also seeks a direction to the first respondent to take him back as an Assistant Grade I and regularize his services therein.

2. A statement has been filed by the first respondent and a counter affidavit has been filed by the second respondent as well. In the statement filed by the first respondent, it is contended that

apparently on vigilance enquiry, it was found that the petitioner was in possession of certain unaccounted funds when he was attending duty in the retail shops. His conduct was found to be unsatisfactory and therefore the first respondent decided to relieve him. In other words, according to the first respondent, cancellation of the deputation was on grounds of conduct which was not satisfactory and this is reflected in Ext.P5.

3. Significantly there was no enquiry prior to any such opinion being formulated by the first respondent. Nor was the petitioner given notice of such a proposal. Though cancellation of deputation need not be preceded by an enquiry or notice, where the deputation was proposed to be cancelled on the premise that the conduct of the deputationist has not been satisfactory, he is entitled to notice and an opportunity of hearing. If there are serious allegations, an enquiry is also to be held in that regard. These have not been done in the present case. In the circumstances, I am constrained to hold Ext.P5 to be vitiated.

4. But it obviously will not stand in the way of the first respondent taking a fresh decision as to whether the petitioner's deputation should continue or not. It is open to the first respondent to take a decision as to whether the deputation should continue and if it is decided otherwise, they are entitled to cancel the deputation.

But in the present case, it is a fact that the second respondent company is a closed public sector undertaking, Exrt.P9 is an extract of the minutes of the cabinet sub committee meeting on public sector undertakings held on 9.8.2005.

Clause – **c** reads as follows:

> *"Many employees from PSUs that are defunct or ordered to be closed down are serving other PSUs on deputation.*
>
> *It was decided that absorption of people on deputation can be considered after examination on a case to case basis if the deputation was based on Government approval against sanctioned posts in the borrowing PSU. However the employees thus absorbed will have to forfeit their claims on arrear salaries lodged before their parent PSUs. PF and other statutory dues will have to be paid to the PSU in which they are absorbed".*

5. In the circumstances, the first respondent shall consider the case of the petitioner keeping in mind the aforementioned clause contained in Ext.P9 in view of the fact that the second respondent is a closed public sector undertaking. I make it clear that I have not indicated, in any manner that the petitioner should be absorbed in the service of the first respondent. It is up to them to take a decision in accordance with law. In the event of the first respondent deciding to cancel the deputation of the first respondent, it is open to them to do so. But in that event, the petitioner will be repatriated back to the second respondent

company and thereupon, since the second respondent is now closed, the petitioner shall be entitled to such retirement benefits as were granted to similarly situated workers. Learned counsel for the first respondent submits that due to financial constraints of the second respondent, which is now a completely closed undertaking, the petitioner will be given retirement benefits but only in the order of priority. The submission is recorded.

In the result, Exts.P5, P6 and P7 are set aside. It is made clear that the first respondent is at liberty to consider the question of cancellation of the petitioner's deputation. But in doing so, they shall keep in mind Ext.P9 and the observations made herein above. In the event of the first respondent deciding to cancel the deputation of the petitioner and not to absorb him in service, he will be entitled to such benefits from the second respondent, as indicated above. Since the petitioner is now out of service, the first respondent shall take a decision, as indicated above, in the matter of either deciding to continue the deputation of the petitioner or cancellation of his deputation, as the case may be, within a period of three months from the date of receipt of a copy of this judgment.

V.GIRI, JUDGE

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